



NAVIGATING THE DIGITAL MARKETPLACE: LEGAL REQUIREMENTS FOR ONLINE CONTRACTS WITH CONSUMERS IN THE EUROPEAN UNION

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ABSTRACT

The internet has revolutionized shopping, offering unparalleled convenience for consumers in the EU and worldwide. However, this digital ease is underpinned by a robust legal framework that ensures fair play for businesses and consumers. Understanding the key legal requirements for online contracts in the EU is crucial for businesses to operate smoothly and ethically within this dynamic market. This article delves into these requirements, equipping businesses with the knowledge to navigate the online contracting landscape confidently. This article explores the key legal requirements for businesses operating in the EU when forming online contracts with consumers. This article further discusses the challenges in the present legal framework and suggests potential solutions. Furthermore, the author has attempted to present a comparative framework with legal requirements of online contracts with consumers in the United States (US) and the United Kingdom (UK). Thus, this article will provide insight to businesses and consumers and aid in navigating the e-commerce and digital marketplace by ensuring the rights of the consumers in the EU are protected.

INTRODUCTION

The growth of e-commerce has revolutionized how businesses interact with consumers. Increasingly, consumers purchase goods and services online, and businesses enter into contracts with consumers electronically. However, the ease and convenience of online contracts with consumers can also create risks, particularly with respect to consumer protection. In response, the European Union (EU) has established a legal framework for online contracts with consumers to ensure that consumers are adequately protected.

The European Union (EU) thrives on a bustling online commerce sector. But with great digital convenience comes responsibility, especially when protecting consumers. EU law establishes a strong framework to ensure fair and transparent online contracts between businesses and consumers. The legal requirements for online contracts with consumers in the EU are an important aspect of consumer protection in the digital age. The European Commission has enforced several directives and regulations such as Directive on Consumer Rights,¹ Directive on Electronic Commerce,² Directive on Electronic Signatures³ repealed by eIDAS Regulation 2016,⁴ Directive for the supply of digital content and digital services to consumers,⁵ Sales of Goods Directive⁶ etc., which provide such framework the legal requirements for online contracts with consumers in the EU. The businesses established or operating within the EU or having their source of interest or providing services within the EU, including online businesses, shall and must

comply with the legal requirements for online contracts with consumers, such as the information requirements, order confirmation and acknowledgement of receipt, technical steps, cooling-off period, unfair contract terms, electronic signature, and data protection, etc.

This legal framework significantly impacts the dealings of businesses that operate online and enter into contracts with consumers in the EU. Failure to comply with such legal requirements leads to the risk of legal liability. Thus, this paper aims to provide an overview of these legal requirements, analyze their impact on online businesses, and offer recommendations for businesses to ensure compliance with the legal framework.

1. OVERVIEW OF THE ONLINE CONTRACTS WITH CONSUMERS WITH EMPHASIS ON THE EU LEGISLATION

Online Contracts, often also called Electronic Contracts, form an imperative part of the E-Commerce and are seen to be entered between service providers or businesses selling online products & services (including digital content) and the consumers. Thus, the legal requirements for online contracts with consumers only apply when service provider offers such product or service to a consumer i.e. “any natural person acting for purposes outside his/her trade, business or profession”.⁷ Thus, this definition makes it clear that consumer is a person who buys for personal purposes and not for professional usage and therefore, legal entities such as corporations and associations does not qualify as ‘Consumers’. This definition of Consumer has been harmonised at the EU level, and member states cannot introduce a different legal definition.

The online contracts are constituted when the offer is made by one party and the same is accepted by the other party in an electronic setting. For example – when you buy any product on Amazon or even a Prime subscription (premium ser-

1 Directive 2011/83/EU – Consumer Rights Directive. (2011). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/2011/83/oj>> (Last accessed: June 10, 2024).

2 Directive 2000/31/EC – Electronic Commerce Directive. (2000). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/2000/31/oj>> (Last accessed: June 10, 2024).

3 Directive 1999/93/EC Electronic Signatures Directive. (1999). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/1999/93/oj>> (Last accessed: June 09, 2024).

4 Regulation (EU) No 910/2014 eIDAS Regulation. (2014). EUR-Lex. European Union <<http://data.europa.eu/eli/reg/2014/910/oj>> (Last accessed: June 11, 2024).

5 Directive (EU) 2019/770 – Digital Content Directive. (2019). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/2019/770/oj>> (Last accessed: June 12, 2024).

6 Directive (EU) 2019/771 – Sale of Goods Directive. (2019). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/2019/771/oj>> (Last accessed: June 12, 2024).

7 Directive 2000/31/EC – Electronic Commerce Directive. (2000). Definition of Consumer, Article 2(e). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/2000/31/oj>> (Last accessed: June 10, 2024).

vice of using Amazon), the prices for the product or service are indicated, and by clicking on the buy button, we accept the offer made by the service provider which by action/conduct of making payment or agreeing to receive the benefits of the product of service, the consumer concludes the online contract.

It is important to note here that there may arise several circumstances when a person may use some good for personal and professional use, for example – a lawyer buying a computer for herself and her kids through a digital marketplace to use for their study, entertainment and other personal usage but also to draft e-mails and briefs for her clients. This situation will give rise to dual purpose contract i.e. when a good or a service has a double purpose. In such cases, to determine whether consumer law applies, one needs to check the prevailing purpose of that contract.⁸ Thus, it has to be determined for what purpose the computer is used more and if it is used 25% for professional work and 75% by herself and her kids for personal reasons, then consumer law will apply on the online contract.

Online contracts not only include goods supplied through the digital marketplace but also includes digital content and services, for example, computer programs, applications, video files, audio files, music files, digital games, e-books or other e-publications, etc. However, consumers are not always confident when buying across borders, especially when it is done online. One of the major factors for consumers' lack of confidence is uncertainty about their key contractual rights and the lack of a clear contractual framework for digital content or digital services. Many consumers experience problems related to the quality of, or access to, digital content or digital services. To remedy such problems, businesses and consumers should be able to rely on fully harmonised contractual rights in certain core areas concerning the supply of digital content or services across the European Union. Thus, with this aim and objective, Directive

8 The European Consumer Organisation. (2018). Module 1: Pre Contractual Information Requirements. Handbook on Consumer Law Training for SMEs. Consumer Law Ready Project https://www.consumerlawready.eu/sites/default/files/2019-04/CLR_Module_1_UK_Precontractual%20information%20requirements.pdf (Last accessed: June 12, 2024).

(EU) 2019/770⁹ on certain aspects concerning contracts for the supply of digital content and digital services was adopted in May 2019.¹⁰

To remain competitive in global markets, the Union adopted the Digital Single Market (DSM) Strategy in 2015, laying down a comprehensive framework facilitating the integration of the digital dimension into the internal market. The DSM has three pillars: improving access to digital goods/services across the EU, fostering conditions for digital networks and innovative services; and optimising the digital economy's growth potential. Following the strategy's release, the Commission proposed several legislative measures to achieve a DSM.¹¹ These legislative measures include Directive (EU) 2019/771¹² on certain aspects concerning contracts for the sale of goods, which cover rules applicable to the sales of goods, including goods with digital elements, only in relation to key contract elements needed to overcome contract-law related barriers in the internal market. Furthermore, finally, with the adoption of the Digital Services Act¹³ and Digital Markets Act,¹⁴ the European Commission has attempted to create a safer digital space in which the fundamental rights of users of digital services are protected and to establish a level playing field to foster innovation, growth and competitiveness in the European single market and globally.¹⁵

Thus, with such legislative protection for consumers, the EU has prescribed several legal requirements for determining the legality of online contracts with consumers since, as consumers, we usually skip to reading the terms and conditions that we agree to while making any online purchase, but this aforesaid legal framework in EU protects

9 Supra at 6.

10 Ibid.

11 Martinello, B. (2024). The Ubiquitous Digital Single Market. Fact Sheets on the European Union – 2024 by European Parliament <https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market#:~:text=On%20May%202015%2C%20the,the%20digital%20economy%27s%20growth%20potential> (Last accessed: May 30, 2024).

12 Supra at 7.

13 Regulation (EU) 2022/2065 – Digital Services Act. (2022). EUR-Lex. European Union <http://data.europa.eu/eli/reg/2022/2065/oj> (Last accessed: June 14, 2024).

14 Regulation (EU) 2022/1925 – Digital Markets Act. (2022). EUR-Lex. European Union <http://data.europa.eu/eli/reg/2022/1925/oj> (Last accessed: June 15, 2024).

15 Supra at 12.

the interests of the consumers by regulating mandatory disclosure requirements, unfair contract terms, cooling-off period, electronic signature, data protection etc. Such legal requirements are elaborated in the next section.

2. LEGAL REQUIREMENTS FOR ONLINE CONTRACTS WITH CONSUMERS

With the enforcement of the Digital Services Act [Regulation (EU) 2022/2065] and Digital Markets Act [Regulation (EU) 2022/1925], the core requirements for online contracts with consumers remained unaffected, and the Electronic Commerce Directive (2000/31/EC) still applies largely to the contracts concluded electronically. Though the Digital Services Act (DSA) has amended the e-commerce directive but, the part dealing with legal requirements for online contracts remains the same and the conditional legal liability exemptions regarding providers of intermediary services, also known as “platform liability” or “notice and takedown” in the European context will be laid down in the Digital Services Act (DSA).¹⁶ The Digital Markets Act (DMA) aims to prevent gatekeeper platforms from unfairly favouring their services or disadvantaging businesses using the platform. This indirectly benefits consumers by promoting a more competitive online marketplace. Furthermore, DSA focuses on creating a more transparent and trustworthy online environment by requiring online platforms to be more transparent in their terms and conditions. It also mandates online marketplaces to implement stronger verification processes for businesses selling on their platforms, thus reducing risks of scams. Therefore, the DSA and DMA don’t replace existing legal requirements for online contracts. However, they create a broader framework that promotes transparency, trust, and fair competition in the digital marketplace. This indirectly strength-

ens consumer protection in online contracting within the EU.

The key Legal Requirements for Online Contracts with Consumers in the EU are as follows:

2.1 Information Disclosure Requirements: One of the key requirements for online contracts with consumers in the EU is that the business must provide the consumer with certain information before the contract is concluded. The information requirements are set out in Directive 2011/83/EU on Consumer Rights,¹⁷ which applies to distance contracts and off-premises contracts, and the Electronic Commerce Directive (2000/31/EC),¹⁸ which applies to contracts concluded electronically. Under these directives, businesses are required to provide the following information to consumers before the contract is concluded:

2.1.1 Identity and contact details of the business: Businesses must provide their name, address, telephone number, email address, and any other relevant contact information.

2.1.2 Description of the goods or services: Businesses must provide a description of the goods or services being offered, including their main characteristics, features, and functionality.

2.1.3 Price of the goods or services: Businesses must provide the total price of the goods or services, including all taxes and fees.

2.1.4 Delivery costs and arrangements: Businesses must provide information on the delivery costs and arrangements, including the delivery time and any applicable delivery restrictions.

2.1.5 Payment methods: Businesses must provide information on the accepted payment methods, including any fees or charges that may apply.

2.1.6 Right of withdrawal: Businesses must inform consumers of their right to withdraw from the contract within a minimum of 14 calendar days without giving any reason.

2.1.7 Complaints and redress mechanisms: Businesses must provide information on how

16 Eenennaam, J., V. (2023). The New Platform Liability: From the e-Commerce Directive to the Digital Services Act Regulation. WiseMen Advocates <<https://www.wisemen.nl/en/news/the-new-platform-liability-from-the-e-commerce-directive-to-the-digital-services-act-regulation-dsa-/#:~:text=The%20e%2Dcommerce%20directive%20from,this%20subject%20from%20now%20on>>> (Last accessed: June 16, 2024).

17 Supra at 2.

18 Supra at 3.

consumers can file complaints and access redress mechanisms if they have a dispute with the business.

2.1.8 Technical steps to conclude the contract:

Businesses must provide information on the technical steps that the consumer needs to follow to conclude the contract, including any technical requirements for accessing and using the service.

It has been made clear in the legal framework that the failure to provide the required information can result in the contract being considered null and void, and the business may be subject to legal liability.

2.2 Technical Steps: In addition to providing the required information to consumers before the contract is concluded, businesses must also provide information on the technical steps that the consumer needs to follow to conclude the contract. By providing this information, businesses can ensure that consumers are able to navigate the online purchasing process and conclude the contract with ease. This requirement is set out in the Electronic Commerce Directive (2000/31/EC),¹⁹ which applies to contracts concluded electronically.

Under this directive, businesses are required to provide clear and understandable information on the technical steps that the consumer needs to follow to conclude the contract. This information must be provided in a way that is easily accessible and must include the following:

- 2.2.1 Information on how to correct errors before placing the order.
- 2.2.2 Information on the technical means for identifying and correcting input errors before placing the order.
- 2.2.3 A clear and understandable confirmation that the order has been placed.
- 2.2.4 Information on the technical means for concluding the contract.
- 2.2.5 Information on how the consumer can access and store the terms of the contract. By providing clear and understandable information on the technical steps, businesses can reduce the risk of errors and misun-

derstandings and the resulting risk of legal liabilities in case of non-compliance.

2.3 Cooling-off Period – The cooling-off period is a period of time during which consumers have the right to withdraw from a contract without penalty and without giving any reason. The cooling-off period is an important aspect of consumer protection, and it is provided for under Directive 2011/83/EU on Consumer Rights,²⁰ which applies to distance contracts and off-premises contracts. Under this directive, consumers have a cooling-off period of 14 days to withdraw from a contract. The cooling-off period starts from the day the consumer receives the goods or from the day the consumer enters into the contract for the provision of services. During this period, consumers can exercise their right of withdrawal by notifying the business of their decision to withdraw from the contract. The notification of withdrawal must be made in a durable medium (i.e. in writing or another format that allows the consumer to store the information) and must include the following information:

- 2.3.1 The consumer’s name and address.
- 2.3.2 A clear statement of the consumer’s decision to withdraw from the contract.
- 2.3.3 The date on which the consumer received the goods or entered into the contract for the provision of services.
- 2.3.4 Information on how to return the goods (if applicable).

This information must be provided before the contract is concluded, and if the business fails to provide the required information on the right of withdrawal, the cooling-off period may be extended to 12 months. In addition, failure to comply with the requirements relating to the cooling-off period can result in the contract being considered null and void, and the business may be subject to legal liability.

2.4 Unfair Contract Terms – Another important aspect of consumer protection in online contracts is the prohibition of unfair contract terms. The Unfair Contract Terms

19 Ibid.

20 Supra at 2.

Directive²¹ aims to protect consumers from unfair contract terms that may be included in contracts with businesses.

Under this directive, businesses must ensure that their contracts with consumers do not contain unfair contract terms. Unfair contract terms are defined as terms that have not been individually negotiated and that, contrary to the requirement of good faith, cause a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. Examples of unfair contract terms include terms that:

- 2.4.1 Limit or exclude the business's liability in the event of a breach of contract.
- 2.4.2 Allow the business to unilaterally change the terms of the contract.
- 2.4.3 Make it difficult or impossible for the consumer to enforce their rights under the contract.
- 2.4.4 Limit the consumer's right to terminate the contract.
- 2.4.5 Allow the business to terminate the contract without notice.

In addition to the Unfair Contract Terms Directive, the Consumer Rights Directive (2011/83/EU) also sets out requirements relating to unfair contract terms. Under this directive, businesses must ensure that their contracts with consumers are transparent and that the terms are expressed in plain and intelligible language. This is intended to ensure that consumers are able to understand the terms of the contract and make informed decisions when entering into the contract. Failure to comply with the requirements of the Unfair Contract Terms Directive can result in the contract being considered null and void, and the business may be subject to legal liability.

- 2.5 Electronic Signature – In the context of online contracts, electronic signatures are an important aspect of contract formation. The Electronic Signatures Directive²² provides a framework for the use of electronic

signatures in EU member states. Under this directive, an electronic signature is defined as “data in electronic form which are attached to or logically associated with other data in electronic form and which serve as a method of authentication”.²³ This means that electronic signatures can take a variety of forms, such as a typed name, a scanned signature, or a digital signature. The level of legal validity of an electronic signature will depend on the circumstances in which it is used and the level of assurance it provides as to the identity of the signatory. The eSignature Directive was repealed as of 1 July 2016 when the rules on trust services under the eIDAS Regulation came into effect.

In addition to the Electronic Signatures Directive, the eIDAS Regulation²⁴ provides a more comprehensive framework for electronic signatures, electronic seals, electronic time stamps, and electronic delivery services. The eIDAS Regulation establishes a common legal framework for the use of electronic identification and trust services throughout the EU and provides a high level of legal certainty for electronic transactions.

- 2.6 Other legal requirements: There are several other legal requirements which are also important to be considered while entering into an Online Contract with the consumer, such as Data protection and processing of personal data in compliance with GDPR,²⁵ the use of clear, legible and comprehensible text on electronic medium for display of information, language in which information shall be presented, etc.

3. CHALLENGES AND POTENTIAL SOLUTIONS

Even with the present legal framework for Online Contracts with consumers in the EU, they face

21 Directive 93/13/EEC – Unfair Terms Directive. (1993). EUR-Lex. European Union <<http://data.europa.eu/eli/dir/1993/13/oj>> (Last accessed: 15 June, 2024).

22 Supra at 4.

23 Supra at 8.

24 Supra at 5.

25 Regulation (EU) 2016/679 – General Data Protection Regulation. (2016). EUR-Lex. European Union <<http://data.europa.eu/eli/reg/2016/679/oj>> (Last accessed: 16 June, 2024).

several challenges and issues, which are as follows:

- 3.1. Enforceability: Online contracts can be difficult to enforce, especially if the business and consumer are located in different countries. This challenge can be addressed by including a choice of law and jurisdiction clause in the contract, specifying which country's laws will govern the contract and which courts will have jurisdiction over any disputes.
- 3.2. Accessibility: Not all consumers have equal access to the Internet, and some may not be able to access online contracts due to disabilities or other limitations. Businesses can address this challenge by providing alternative means of accessing the contract, such as offering printed copies upon request or providing an audio version of the contract for visually impaired consumers.
- 3.3. Language barriers: Online contracts can present challenges related to language barriers, particularly for consumers who are not fluent in the language of the contract. To address this challenge, businesses can provide online contracts in multiple languages or offer translation services for consumers who require them.
- 3.4. Clarity and understandability: Online contracts may not always be clear and easy to understand for consumers, particularly those who are not familiar with legal terms and concepts. This challenge can be addressed by ensuring that the contract is written in clear and concise language, free from legal jargon, and providing clear explanations of any legal terms or concepts.
- 3.5. Electronic signatures: The use of electronic signatures in online contracts can also present challenges related to authentication and verification. Businesses can address this challenge by using secure electronic signature technology that meets the requirements of EU regulations. Though businesses face the aforementioned challenges, there are efficient ways of addressing them, which can promote trust and confidence in online transactions and ensure compliance with EU regulations.

4. COMPARISON WITH THE INTERNATIONAL LEGAL FRAMEWORKS (EU, USA & UK)

While comparing the legal framework of the EU with that of the United States and the United Kingdom with regard to legal requirements of the online contracts with consumers, it can be observed that there are certain similarities and differences which are highlighted below:

- 4.1. Formation of Contracts: In the United States, online contracts are generally governed by state law, which may require certain elements for a contract to be valid, such as an offer, acceptance, and consideration. Some states also require that online contracts be in writing and signed by both parties. Whereas, in the UK, online contracts are governed by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which require businesses to provide certain information to consumers before the contract is concluded, such as the identity of the business, the main characteristics of the goods or services, and the total price. This is also similar to European Standards and requirements.²⁶
- 4.2. Information Requirements: In the U.S., online businesses are required to provide consumers with certain information, such as the terms and conditions of the contract, the total price, and any applicable taxes or fees. Whereas in the EU, online businesses are required to provide consumers with certain information before the contract is concluded, such as the main characteristics of the goods or services, the total price, and any applicable taxes or delivery costs, and this is also similar in the UK as in EU.
- 4.3. Cooling-off Period: In the U.S., there is no federal cooling-off period for online purchases, but some states have their cooling-off periods for certain types of transactions. Whereas, in the EU, consumers have

26 Cordera, M. (2001). E-consumer Protection: A Comparative Analysis of EU and US Consumer Protection on the Internet. Rutgers Computer & Technology Law Journal, 27. L.J. 231, 237.

a right to a 14-day cooling-off period for most online purchases, during which they can cancel the contract without giving any reason and this is also the case similar in UK as in EU.²⁷

- 4.4 Electronic Signatures: In the U.S., electronic signatures are generally considered legally binding if they meet certain requirements under the Electronic Signatures in Global and National Commerce Act (ESIGN) or the Uniform Electronic Transactions Act (UETA). Similarly, in the EU, electronic signatures are governed by the eIDAS Regulation & Electronic Signatures Directive and in the UK, by the Electronic Communications Act 2000.²⁸

CONCLUSION/SUMMARY

There has been constant emphasis on following the legal requirement of online contracts with consumers in the EU, as they are designed to protect the interests of consumers and promote trust and confidence in online transactions. These legal requirements cover a wide range of areas, including information requirements, order confirmation and acknowledgement of receipt, technical steps,

cooling-off periods, unfair contract terms, electronic signatures, and data protection etc.

To comply with these legal requirements, businesses must take a proactive approach to online contract formation and ensure that their online contracts are clear, concise, and easy to understand. They must also ensure that they provide consumers with clear and concise information about their contractual rights and obligations and any additional charges or fees that may apply. In addition, businesses must ensure that they comply with the technical requirements for online contracts, such as providing consumers with a clear and unambiguous means of correcting errors in their orders and acknowledging receipt of their orders.

Furthermore, businesses must also ensure that they comply with the data protection requirements for online contracts, including obtaining explicit consent from consumers before processing their personal data and ensuring that personal data is processed securely and lawfully. By complying with these legal requirements, businesses can promote trust and confidence in online transactions and ensure that consumers can make informed decisions about their contractual rights and obligations. This, in turn, can help to promote the growth and development of e-commerce in the EU and ensure that online transactions continue to be a safe, reliable, and convenient way for consumers to purchase goods and services.

27 Ibid.

28 Ibid.

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